

## **Section II (Remarks)**

### **A. Summary of Amendment to the Claims**

By the present Amendment, claim 23 has been amended. No new matter within the meaning of 35 U.S.C. §132(a) has been introduced by the foregoing amendment.

The amendment made herein is fully consistent with and supported by the originally-filed disclosure of this application. Specifically, the amendment to claim 23 is made to clarify that the one or more peptides of that claim comprise the amino acid sequence of SEQ ID NO: 6.

In view of the finality of the July 22, 2010 Office Action and to ensure substantive consideration of this response, a Request for Continued Examination is concurrently submitted herewith, together with payment of the appertaining RCE fees (see *infra*, “Conclusion”).

### **B. Objection to the Specification**

In the July 22, 2010 Final Office Action, the examiner alleged that “[t]here is one remaining informality in the specification that should be corrected...” and that “correction to p. 4, lines 24-26 is required... Applicants respectfully submit that such amendment was made by the Office Action Response submitted April 14, 2010. The history of amendments to page 4 of the application is as follows:

<b><u>Date of Amendment</u></b>	<b><u>Location of Amendment</u></b>	<b><u>Nature of Amendment</u></b>	<b><u>Comments on Amendment</u></b>
August 3, 2009	Page 4, line 21 to page 5, line 10	Amended recitation of position numbers	This was a proper amendment
August 3, 2009	Page 4 lines 24-26	SEQ ID NO; 37 amended to SEQ ID NO: 38	Improper recitation of page number; should have requested amendment of page <u>5</u> , lines 24-26
April 14, 2010	Page 4, line 21 to page 5, line 10	Further amended this paragraph to correct typographical errors	This was a proper amendment

As is seen from the above table, the improper amendment of page 4, lines 24-26 was remedied by the subsequent entry of a replacement paragraph at page 4, line 21 to page 5, line 10, inclusive of page 4, lines 24-26. This conclusion was confirmed in a teleconference between Examiner Kemmerer and Attorney Kelly Reynolds on November 19, 2010.

Accordingly, withdrawal of the objection to the specification is respectfully requested.

**C. Rejection Under 35 U.S.C. §112, first paragraph**

In the Final Office Action mailed July 22, 2010 the examiner rejected claim 23 as failing to comply with the written description requirement. Specifically, the examiner rejected the claim for recitation of “one or more peptides having an amino acid sequence of SEQ ID NO: 6...”

In response, the examiner’s attention is respectfully directed to Section I above, where claim 23 has been amended, in relevant part, to recite “...one or more peptides comprising the amino acid sequence of SEQ ID NO: 6...” As noted by the examiner at page 5 of the July 22, 2010 Final Office Action “...one or more peptides comprising the sequence of SEQ ID NO: 6 [were] shown in the specification to have bone formation activity...” and, at page 6, where it was stated that “...scaffolds comprising one or more peptides comprising **the** amino acid sequence of SEQ ID NO: 6...[meet] the written description requirement...”

Accordingly, as amended, the subject matter of claim 23 has been acknowledged by the examiner as satisfying the written description requirement. Withdrawal of the rejection is respectfully requested.

**D. Comment on Allowability of the Claims**

At page 7 of the Office Action mailed July 22, 2010, the examiner noted claims 2, 3, 10-13, 19, 21 and 22 as allowable. Applicants acknowledge the allowability of such pending claims and submit that in view of the above statements and amendments, all pending claims of the application are in form and condition for allowance.

**CONCLUSION**

Based on the foregoing, all of applicants’ pending claims 2, 3, 10-13, 19 and 21-23 are patentably distinguished over the art, and in form and condition for allowance. The examiner is requested to favorably consider the foregoing and to responsively issue a Notice of Allowance.

The time for responding to the July 22, 2010 Office Action without extension was set at three months, or October 22, 2010. Applicants hereby request a one month extension of time under 37

CFR § 1.136 to extend the deadline for response to November 22, 2010. This Response is therefore timely. Payment of the extension fee of \$65.00 specified in 37 C.F.R. § 1.17(a)(1) and the RCE fee of \$405.00 specified in 37 C.F.R. § 1.17(e), as applicable to small entity, is being made by on-line credit card authorization at the time of EFS submission of this Response. Should any additional fees be required or an overpayment of fees made, please debit or credit our Deposit Account No. 08-3284, as necessary.

If any issues require further resolution, the examiner is requested to contact the undersigned attorneys at (919) 419-9350 to discuss same.

Respectfully submitted,

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Enclosures:  
RCE Transmittal [1 pg.]  
IDS Form PTO-1449

<p>The USPTO is hereby authorized to charge any deficiency or credit any overpayment of fees properly payable for this document to Deposit Account No. 08-3284</p>
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